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5-23-2007

**Supplemental Declaration of William G. Clark in Opposition to  
Summary Judgment Motion on CR 56(f) Grounds 07-2-02323-2-19**

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KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

THE HONORABLE PARIS K. KALLAS

STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

MATHEW & STEPHANIE McCLEARY,  
on their own and on behalf of KELSEY &  
CARTER McCLEARY, their two children  
in Washington's public schools;  
ROBERT & PATTY VENEMA, on their  
own behalf and on behalf of HALIE &  
ROBBIE VENEMA, their two children in  
Washington's public schools; and  
NETWORK FOR EXCELLENCE IN  
WASHINGTON SCHOOLS ("NEWS"), a  
state-wide coalition of community groups,  
public school districts, and education  
organizations,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

NO. 07-2-02323-2 SEA

SUPPLEMENTAL  
DECLARATION OF WILLIAM G.  
CLARK IN OPPOSITION TO  
SUMMARY JUDGMENT  
MOTION ON CR 56(f) GROUNDS

I, WILLIAM G. CLARK, declare as follows:

1. In my first Declaration, I indicated that we had served discovery in this case prior to the filing of Petitioners' summary judgment pleadings. I testified further regarding the need for this basic and timely discovery to explore issues material to liability and

ORIGINAL

1 remedies, issues and allegations in the Petition. On May 21, 2007, after our pleadings in  
2 Opposition to Summary Judgment were filed and served, Petitioners served blanket objections  
3 to Respondent's Document Production Requests and refused to provide discovery altogether.  
4 Copies of Petitioners' refusal to respond to this legitimate and necessary discovery are  
5 attached as Exhibit 1 hereto.

6 2. As stated in my first Declaration, the discovery is designed to obtain basic  
7 documentation that Petitioners must have in order to substantiate the many allegations made  
8 in their Petition. Most of the discovery concerns allegations that appear in the Petition itself.

9 3. The Court also can see from a cursory review of the response that the  
10 objections raised are boilerplate in nature. Petitioners apparently believe that their  
11 representations about the type of case they think they have brought precludes elementary  
12 discovery about the case they have actually pleaded. Moreover, they take the untenable  
13 position that documents (even public records) which support their contentions are  
14 undiscoverable work product.

15 4. Discovery motions ultimately will resolve the disputes over the merits of these  
16 objections. However, at this point, Petitioners' refusal to engage in discovery is another  
17 reason to deny their Summary Judgment Motion.

18 5. The discovery sought is timely, is relevant because it requests documents that  
19 pertain to allegations in the Petition and is material because it tests the liability claim (the  
20 alleged underfunding of basic education) and the remedy requested (a court-ordered cost  
21 study).

22 6. Petitioners cannot urge this Court to enter judgment in their favor while they  
23 stonewall the discovery process. Refusal to make discovery can justify outright dismissal of  
24 their case. CR 37.

7. Whether on the merits or pursuant to CR 56(f), the Court should deny Petitioners' Motion and order that no further dispositive motions may be filed by Petitioners until after they fulfill their discovery obligations.

WILLIAM G. CLARK declares under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

SIGNED this 23<sup>d</sup> day of May, 2007, at Seattle, Washington.

William G. Clark  
WILLIAM G. CLARK

1 **PROOF OF SERVICE**

2 I certify that I served a copy of this document on all parties or their counsel of record  
3 on the date below as follows:

4 ☐ US Mail Postage Prepaid via Consolidated Mail Service

5 ☒ ABC/Legal Messenger

6 ☐ State Campus Delivery

7 ☐ Hand delivered by \_\_\_\_\_

8 I certify under penalty of perjury under the laws of the state of Washington that the  
9 foregoing is true and correct.

10 DATED this 23rd day of May, 2007, at Seattle, Washington

11   
12 \_\_\_\_\_  
13 AGNES ROCHE  
14  
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**EXHIBIT 1**

1  
2  
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4  
5  
6  
7 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

8 MATHEW & STEPHANIE McCLEARY, on  
9 their own and on behalf of KELSEY &  
10 CARTER McCLEARY; ROBERT & PATTY  
11 VENEMA, on their own behalf and on behalf  
12 of HALIE & ROBBIE VENEMA; and  
13 NETWORK FOR EXCELLENCE IN  
14 WASHINGTON SCHOOLS ("NEWS"),

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Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

The Honorable Paris K. Kallas

No. 07-2-02323-2 SEA

PETITIONERS' INITIAL RESPONSES  
TO RESPONDENT'S FIRST REQUESTS  
FOR PRODUCTION

ORIGINAL

16 I. PRELIMINARY STATEMENT

17 A brief preliminary statement is necessary to put the State's document requests into  
18 context because the State's requests overlook two crucial facts:

19 First, unlike the broad and expansive education funding lawsuits in other states, this is a  
20 declaratory judgment action does not ask the Court to determine the exact dollar amount that the  
21 State must fund to comply with the education clause of the state constitution. Instead, this action  
22 asks the Court to declare the legal meaning of the education mandate in Washington's  
23 Constitution (a pure question of law), and confirm that the State is currently not complying with  
24 that meaning. This case does not present a factually complex matter-of-degree question (how  
25 badly is the State failing?) but a binary yes-or-no question (is the State failing?). And, as the  
26 pending summary judgment motion in this case explains, the State's own data and testimony

PETITIONERS RESPONSES TO RESPONDENT'S  
FIRST REQUESTS FOR PRODUCTION - 1

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1 confirm that the State is, as Governor Gregoire recently declared, failing our students. In short,  
2 the State's numerous requests for a voluminous production of documents serves no legally  
3 legitimate purpose because he limited relief sought by the McClearys, Venemas, and the  
4 Network for Excellence in Washington Schools ("NEWS") (collectively, "Petitioners") means  
5 that there can be no genuine dispute of material fact in this case. (Pure harassment is not a  
6 legitimate purpose.)

7 Second, Petitioners have filed a motion for summary judgment that is scheduled for  
8 hearing on June 1, 2007 because the State's own admissions, and own documents, confirm that  
9 Petitioners are as a matter of law entitled to the limited relief they seek – i.e., that the Court order  
10 the State to (1) determine the actual dollar cost of providing all children in our State with the  
11 basic education mandated by the Court's legal interpretation of our Constitution, and (2)  
12 determine how it will fully fund that cost. The State is ignoring the limited scope of this relief to  
13 instead demand a sweeping search for and production of documents that are relevant only to the  
14 degree of the State's constitutional violation. The State is demanding that both parties and non-  
15 parties engage in this intensive document search. But as Petitioners explain below, this search is  
16 not warranted – especially before the Court resolves the pending summary judgment motion in  
17 this case.

## 18 II. GENERAL OBJECTIONS

19 A. Petitioners object to producing any documents before the pending summary  
20 judgment motion is decided because, as Petitioners' motion for summary judgment and the  
21 foregoing preliminary statement explain, this case should properly be decided as a matter of law.  
22 If the Court's ruling on the motion for summary judgment leaves any factual issues for trial,  
23 Petitioners will arrange to produce their documents that are not privileged or otherwise subject to  
24 protection and that are responsive to the State's requests in light of the Court's ruling.

25 B. Petitioners object to the State's 30-request set of document requests because they  
26 are unreasonable, unduly burdensome given the needs of this case, and are not reasonably



1 calculated to lead to the discovery of admissible evidence. This case poses only two questions:  
2 (1) what is the State's legal duty under Article IX, § 1? (a pure legal question), and (2) is the  
3 State currently complying with the Court's ruling on that duty? Petitioners are not attempting to  
4 establish – as the State's voluminous document requests assume – the degree of the State's  
5 constitutional violation by, for example, asking the Court to decide what amount of funding the  
6 State must provide. That question (which would be factually intense and perhaps justify the  
7 State's scorched-earth document requests) is not before the Court. The questions this lawsuit  
8 actually presents are answered by the State's own documents, and there is no legally legitimate  
9 need for burdensome exercise the State demands.

10 C. Petitioners object to the State's 30-request set of document requests because the  
11 State is asking the individual members of NEWS to produce documents even though they are not  
12 parties to this lawsuit and not subject to CR 34. The State's attempt to serve CR 34 document  
13 requests on non-parties is – like the requests themselves – overreaching and unwarranted under  
14 the rules of civil procedure. This tactic appears calculated to increase the cost of this lawsuit and  
15 harass those who have associated together to challenge the State's ongoing constitutional  
16 violation. CR 34 does not apply to non-party NEWS members, and they are not required to  
17 voluntarily engage in a tremendously expensive and irrelevant document search.

18 NEWS, the non-profit corporation, is a party to this lawsuit, and it is responding to the  
19 State's requests by serving these objections. If the Court's ruling on the pending motion for  
20 summary judgment leaves any factual issues for trial, NEWS will arrange to produce its  
21 documents that are not privileged or otherwise subject to protection and that are responsive to the  
22 State's requests in light of the Court's ruling. That production would cover the time frame when  
23 Petitioner NEWS was incorporated to the present (not January 1, 2001 to the present, as the State  
24 has demanded).

25 D. Petitioners object to the State's 30-request set of document requests because they  
26 seek documents that fall within the attorney client privilege, that are within the work product

1 doctrine, that constitute trial preparation materials within the meaning of CR 26(b)(3), and that  
2 constitute expert witness information that is not discoverable under CR 26(b)(4). Without  
3 limiting this objection, Petitioners specifically object to the following:

4 1. Petitioners object to producing any documents in response to the State's repeated  
5 request for documents that "support, negate refer or relate to" a particular legal contention  
6 because the request would require counsel to analyze documents and produce the ones that most  
7 reveal counsel's legal strategy and theories. The documents in Petitioners' possession, custody  
8 or control that are potentially responsive to these requests are the approximately 42,000  
9 documents that the State produced to comply with our Public Records Act requests; publicly  
10 available State and other documents that Petitioners' counsel has selected and retained; and legal  
11 research. To comply with the State's requests, Petitioners' counsel would mostly have to  
12 analyze the State's own documents and tell the State which of these documents Petitioners'  
13 counsel believes are central to this case. Petitioners will not engage in and then produce this  
14 opinion work product, as it would reveal counsel's mental impressions, legal strategy, intended  
15 lines of proof, perceived strengths and weaknesses of this case, and would require Petitioners to  
16 put on a dress rehearsal for trial by identifying what its counsel thinks are the relevant and most  
17 persuasive documents for both the State's and its own case.

18 2. Petitioners object to producing any documents that their counsel selected,  
19 compiled and retained from documents that the State makes available to the public (e.g., the  
20 State's webpages, archives, and court records) in anticipation of this litigation. Petitioners also  
21 object to producing other documents their counsel obtained through legal research (e.g., finance  
22 studies and case law) conducted in anticipation of this litigation. By producing the documents  
23 that Petitioners' counsel has gathered and used to develop legal theories, Petitioners' counsel  
24 would reveal mental impressions, legal strategy, intended lines of proof and other opinion work  
25 product. The State has access to these documents – all of them are publicly available and most  
26

1 are already in the State's possession – and Petitioners' counsel should not be required to tell the  
2 State which materials it used for formulate and prepare for this litigation.

3 E. Petitioners do not know of any justification under the civil rules for the sweeping  
4 scope and demands of the State's document requests. There is no legitimate reason for the State  
5 to cast such a wide net, which seeks to capture irrelevant documents both from the parties to this  
6 lawsuit and from non-parties. Petitioners' counsel will make himself available on any day and at  
7 any time he does not already have a binding commitment in order to have any discovery  
8 conference the Respondent State's counsel wishes to have to explain why the State's discovery  
9 requests as submitted are proper – and if Petitioners do not agree with that explanation,  
10 Petitioners will promptly undertake the burden of filing a motion for a protective order to resolve  
11 whatever discovery disputes remain at the conclusion of that discovery conference.

12 F. The following responses are made without waiving or intending to waive – but, to  
13 the contrary, reserving and intending to reserve – the right to object on any grounds to the use of  
14 any documents or information that ultimately may be produced in reply to the State's requests,  
15 whether at trial of this action or in any connection with this or any other action or proceeding.

### 16 III. RESPONSES

17 Subject to and incorporating the above, Petitioners responds to State's document requests  
18 as follows:

#### 19 RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

20 *As stated in Petitioners' General Objections, Petitioners will not produce documents*  
21 *until the Court resolves Petitioners' pending motion for summary judgment because, as that*  
22 *motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be*  
23 *decided as a matter of law.*

24 *Please note, moreover, that as currently written, the State's above production request*  
25 *demand documents that are neither relevant nor reasonably calculated to lead to the discovery*  
26 *of admissible evidence in this case. The State's request that Petitioners select from State*  
*documents, including the over 42,000 documents that the State hand delivered under the Public*  
*Records Act, the documents that its attorneys believe "support, negate, refer or relate" to the*  
*production request's contention is an impermissible request for Petitioners' attorneys to engage*  
*in and produce work product. The State's request is also ambiguous, overbroad, and without the*  
*requisite specificity for a document request under CR 34 – and if taken literally, it would require*  
*a search and production that is hopelessly overbroad and unduly burdensome and harassing,*

PETITIONERS RESPONSES TO RESPONDENT'S  
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1 both to Petitioners and the non-parties to whom this request is addressed. It also seeks  
2 information that currently is equally or more available to the State, as it is the State's own  
3 publicly available documents resolve this case. Responding to the request also calls for the  
4 making of a legal conclusion (e.g., the request's use of "ample"). And it seeks information that  
5 is privileged or confidential (e.g., attorney-client communications).

6 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
7 the above objections so Petitioners can respond without, for example, disclosing protected work  
8 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
9 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
10 above document request as propounded by the State, Petitioners ask that the State so inform  
11 Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
12 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
13 for this request as currently worded so that, if the State doesn't, Petitioners can file an  
14 appropriate motion for a protective order.

### 15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

16 As stated in Petitioners' General Objections, Petitioners will not produce documents  
17 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
18 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
19 decided as a matter of law.

20 Please note, moreover, that as currently written, the State's above production request  
21 demands documents that are neither relevant nor reasonably calculated to lead to the discovery  
22 of admissible evidence in this case. The State's catch-all "study or analyze" phrase renders this  
23 request's scope ambiguous, overbroad, and without the requisite specificity for a document  
24 request under CR 34 – and if taken literally, demands a search and production that is hopelessly  
25 overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to  
26 whom this request is directed. It also seeks information that currently is equally or more  
available to the State, as it is the State's own publicly available documents resolve this case.  
Responding to the request also calls for the making of a legal conclusion (e.g., the request's use  
of "education" when the legal meaning of that word is a central legal issue). And it seeks  
information that is privileged or confidential (e.g., attorney-client communications).

Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
the above objections so Petitioners can respond without, for example, disclosing protected work  
product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
above document request as propounded by the State, Petitioners ask that the State so inform  
Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
for this request as currently worded so that, if the State doesn't, Petitioners can file an  
appropriate motion for a protective order.

### 22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

23 As stated in Petitioners' General Objections, Petitioners will not produce documents  
24 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
25 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
26 decided as a matter of law.

Please note, moreover, that as currently written, the State's above production request  
demands documents that are neither relevant nor reasonably calculated to lead to the discovery  
of admissible evidence in this case. The State's catch-all "refer or relate to" phrase renders this

1 request's scope ambiguous, overbroad, and without the requisite specificity for a document  
2 request under CR 34 – and if taken literally, demands a search and production that is hopelessly  
3 overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to  
4 whom this request is directed. It also seeks information that currently is equally or more  
5 available to the State, as it is the State's own publicly available documents resolve this case.  
6 Responding to the request calls for the making of a legal conclusion (e.g., the request's use of  
7 "education" when the legal meaning of that word is a central legal issue). And it seeks  
8 information that is privileged or confidential (e.g., attorney-client communications).

9 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
10 the above objections so Petitioners can respond without, for example, disclosing protected work  
11 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
12 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
13 above document request as propounded by the State, Petitioners ask that the State so inform  
14 Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
15 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
16 for this request as currently worded so that, if the State doesn't, Petitioners can file an  
17 appropriate motion for a protective order.

#### 18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

19 As stated in Petitioners' General Objections, Petitioners will not produce documents  
20 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
21 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
22 decided as a matter of law.

23 Please note, moreover, that as currently written, the State's above production request  
24 mischaracterizes Petitioners' contention and demands documents that are neither relevant nor  
25 reasonably calculated to lead to the discovery of admissible evidence in this case. The State's  
26 request that Petitioners select from State documents, including the over 42,000 documents that  
the State hand delivered under the Public Records Act, the documents that its attorneys believe  
"support, negate, refer or relate" to the production request's contention is an impermissible  
request for Petitioners' attorneys to engage in and produce work product. The State's request is  
also ambiguous, overbroad, and without the requisite specificity for a document request under  
CR 34 – and if taken literally, it would require a search and production that is hopelessly  
overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to  
whom this request is addressed. It also seeks information that currently is equally or more  
available to the State, as it is the State's own publicly available documents resolve this case.  
Responding to the request also requires the making of a legal conclusion (e.g., the request's use  
of "education" when the legal meaning of that word is a central legal issue). And it seeks  
information that is privileged or confidential (e.g., attorney-client communications).

Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
the above objections so Petitioners can respond without, for example, disclosing protected work  
product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
above document request as propounded by the State, Petitioners ask that the State so inform  
Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
for this request as currently worded so that, if the State doesn't, Petitioners can file an  
appropriate motion for a protective order.

#### 25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

26  
PETITIONERS RESPONSES TO RESPONDENT'S  
FIRST REQUESTS FOR PRODUCTION - 7

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1 As stated in Petitioners' General Objections, Petitioners will not produce documents  
2 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
3 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
4 decided as a matter of law.

5 Please note, moreover, that as currently written, the State's above production request  
6 mischaracterizes Petitioners' contention and demands documents that are neither relevant nor  
7 reasonably calculated to lead to the discovery of admissible evidence in this case. The State's  
8 request that Petitioners select from State documents, including the over 42,000 documents that  
9 the State hand delivered under the Public Records Act, the documents that its attorneys believe  
10 "support, negate, refer or relate" to the production request's contention is an impermissible  
11 request for Petitioners' attorneys to engage in and produce work product. The State's request is  
12 also ambiguous, overbroad, and without the requisite specificity for a document request under  
13 CR 34 – and if taken literally, it would require a search and production that is hopelessly  
14 overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to  
15 whom this request is addressed. It also seeks information that currently is equally or more  
16 available to the State, as it is the State's own publicly available documents resolve this case.  
17 Responding to it calls for the making of a legal conclusion (e.g., the request's use of "stable,  
18 regular and reliable" and "education" when the legal meaning of that word is a central legal  
19 issue). And it seeks information that is privileged or confidential (e.g., attorney-client  
20 communications).

21 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
22 the above objections so Petitioners can respond without, for example, disclosing protected work  
23 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
24 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
25 above document request as propounded by the State, Petitioners ask that the State so inform  
26 Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
for this request as currently worded so that, if the State doesn't, Petitioners can file an  
appropriate motion for a protective order.

#### 16 RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

17 As stated in Petitioners' General Objections, Petitioners will not produce documents  
18 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
19 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
20 decided as a matter of law.

21 Please note, moreover, that as currently written, the State's above production request  
22 mischaracterizes Petitioners' contention and demands documents that are neither relevant nor  
23 reasonably calculated to lead to the discovery of admissible evidence in this case. The State's  
24 request that Petitioners select from State documents, including the over 42,000 documents that  
25 the State hand delivered under the Public Records Act, the documents that its attorneys believe  
26 "support, negate, refer or relate" to the production request's contention is an impermissible  
request for Petitioners' attorneys to engage in and produce work product. The State's request is  
also ambiguous, overbroad, and without the requisite specificity for a document request under  
CR 34 – and if taken literally, it would require a search and production that is hopelessly  
overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to  
whom this request is addressed. It also seeks information that currently is equally or more  
available to the State, as it is the State's own publicly available documents resolve this case.  
Responding to it calls for the making of a legal conclusion (e.g., the request's use of "goals" and  
RCW 28A.150.210). And it seeks information that is privileged or confidential (e.g.,  
attorney-client communications).

1       Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
2       the above objections so Petitioners can respond without, for example, disclosing protected work  
3       product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
4       expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
5       above document request as propounded by the State, Petitioners ask that the State so inform  
6       Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
7       CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
8       for this request as currently worded so that, if the State doesn't, Petitioners can file an  
9       appropriate motion for a protective order.

#### 10       **REQUEST FOR PRODUCTION NO. 7:**

11       As stated in Petitioners' General Objections, Petitioners will not produce documents  
12       until the Court resolves Petitioners' pending motion for summary judgment because, as that  
13       motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
14       decided as a matter of law.

15       Please note, moreover, that as currently written, the State's above production request  
16       mischaracterizes Petitioners' contention and demands documents that are neither relevant nor  
17       reasonably calculated to lead to the discovery of admissible evidence in this case. The State's  
18       request that Petitioners select from State documents, including the over 42,000 documents that  
19       the State hand delivered under the Public Records Act, the documents that its attorneys believe  
20       "support, negate, refer or relate" to the production request's contention is an impermissible  
21       request for Petitioners' attorneys to engage in and produce work product. The State's request is  
22       also ambiguous, overbroad, and without the requisite specificity for a document request under  
23       CR 34 – and if taken literally, it would require a search and production that is hopelessly  
24       overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to  
25       whom this request is addressed. It also seeks information that currently is equally or more  
26       available to the State, as it is the State's own publicly available documents resolve this case.  
27       Responding to it calls for the making of a legal conclusion (e.g., the request's "EALRS"  
28       contention). And it seeks information that is privileged or confidential (e.g., attorney-client  
29       communications).

30       Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
31       the above objections so Petitioners can respond without, for example, disclosing protected work  
32       product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
33       expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
34       above document request as propounded by the State, Petitioners ask that the State so inform  
35       Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
36       CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
37       for this request as currently worded so that, if the State doesn't, Petitioners can file an  
38       appropriate motion for a protective order.

#### 39       **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

40       As stated in Petitioners' General Objections, Petitioners will not produce documents  
41       until the Court resolves Petitioners' pending motion for summary judgment because, as that  
42       motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
43       decided as a matter of law.

44       Please note, moreover, that as currently written, the State's above production request  
45       demands documents that are neither relevant nor reasonably calculated to lead to the discovery  
46       of admissible evidence in this case. The State's catch-all "refer or relate to" phrase renders this  
47       request's scope ambiguous, overbroad, and without the requisite specificity for a document

1 request under CR 34 – and if taken literally, it would require a search and production that is  
2 hopelessly overbroad and unduly burdensome and harassing, both to Petitioners and the non-  
3 parties to whom this request is addressed. It also seeks information that currently is equally or  
4 more available to the State or other parties. And it seeks information that is privileged or  
5 confidential (e.g., attorney-client communications or work product).

6 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
7 the above objections so Petitioners can respond without, for example, disclosing protected work  
8 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
9 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
10 above document request as propounded by the State, Petitioners ask that the State so inform  
11 Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
12 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
13 for this request as currently worded so that, if the State doesn't, Petitioners can file an  
14 appropriate motion for a protective order.

#### 15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

16 As stated in Petitioners' General Objections, Petitioners will not produce documents  
17 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
18 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
19 decided as a matter of law.

20 Please note, moreover, that as currently written, the State's above production request  
21 mischaracterizes Petitioners' contention and demands documents that are neither relevant nor  
22 reasonably calculated to lead to the discovery of admissible evidence in this case. The State's  
23 request that Petitioners select from State documents, including the over 42,000 documents that  
24 the State hand delivered under the Public Records Act, the documents that its attorneys believe  
25 "support, negate, refer or relate" to the production request's contention is an impermissible  
26 request for Petitioners' attorneys to engage in and produce work product. The State's request is  
27 also ambiguous, overbroad, and without the requisite specificity for a document request under  
28 CR 34 – and if taken literally, it would require a search and production that is hopelessly  
29 overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to  
30 whom this request is addressed. It also seeks information that currently is equally or more  
31 available to the State, as it is the State's own publicly available documents resolve this case.  
32 And it seeks information that is privileged or confidential (e.g., attorney-client communications).

33 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
34 the above objections so Petitioners can respond without, for example, disclosing protected work  
35 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
36 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
37 above document request as propounded by the State, Petitioners ask that the State so inform  
38 Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
39 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
40 for this request as currently worded so that, if the State doesn't, Petitioners can file an  
41 appropriate motion for a protective order.

#### 42 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

43 As stated in Petitioners' General Objections, Petitioners will not produce documents  
44 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
45 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
46 decided as a matter of law.



1 Please note, moreover, that as currently written, the State's above production request  
2 demands documents that are neither relevant nor reasonably calculated to lead to the discovery  
3 of admissible evidence in this case. The State's request that Petitioners select from State  
4 documents, including the over 42,000 documents that the State hand delivered under the Public  
5 Records Act, the documents that its attorneys believe "support, negate, refer or relate" to the  
6 production request's contention is an impermissible request for Petitioners' attorneys to engage  
7 in and produce work product. The State's request is also ambiguous, overbroad, and without the  
8 requisite specificity for a document request under CR 34 – and if taken literally, it would require  
9 a search and production that is hopelessly overbroad and unduly burdensome and harassing,  
10 both to Petitioners and the non-parties to whom this request is addressed. It also seeks  
11 information that currently is equally or more available to the State, as it is the State's own  
12 publicly available documents resolve this case. And it seeks information that is privileged or  
13 confidential (e.g., attorney-client communications).

14 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
15 the above objections so Petitioners can respond without, for example, disclosing protected work  
16 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
17 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
18 above document request as propounded by the State, Petitioners ask that the State so inform  
19 Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
20 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
21 for this request as currently worded so that, if the State doesn't, Petitioners can file an  
22 appropriate motion for a protective order.

#### 23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

24 As stated in Petitioners' General Objections, Petitioners will not produce documents  
25 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
26 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
decided as a matter of law.

1 Please note, moreover, that as currently written, the State's above production request  
2 demands documents that are neither relevant nor reasonably calculated to lead to the discovery  
3 of admissible evidence in this case. The State's request that Petitioners select from State  
4 documents, including the over 42,000 documents that the State hand delivered under the Public  
5 Records Act, the documents that its attorneys believe "support, negate, refer or relate" to the  
6 production request's contention is an impermissible request for Petitioners' attorneys to engage  
7 in and produce work product. The State's request is also ambiguous, overbroad, and without the  
8 requisite specificity for a document request under CR 34 – and if taken literally, it would require  
9 a search and production that is hopelessly overbroad and unduly burdensome and harassing,  
10 both to Petitioners and the non-parties to whom this request is addressed. It also seeks  
11 information that currently is equally or more available to the State, as it is the State's own  
12 publicly available documents resolve this case. And it seeks information that is privileged or  
13 confidential (e.g., attorney-client communications).

14 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
15 the above objections so Petitioners can respond without, for example, disclosing protected work  
16 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
17 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
18 above document request as propounded by the State, Petitioners ask that the State so inform  
19 Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
20 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
21 for this request as currently worded so that, if the State doesn't, Petitioners can file an  
22 appropriate motion for a protective order.

PETITIONERS RESPONSES TO RESPONDENT'S  
FIRST REQUESTS FOR PRODUCTION - 11

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1           **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

2           *As stated in Petitioners' General Objections, Petitioners will not produce documents*  
3 *until the Court resolves Petitioners' pending motion for summary judgment because, as that*  
4 *motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be*  
5 *decided as a matter of law.*

6           *Please note, moreover, that as currently written, the State's above production request*  
7 *mischaracterizes Petitioners' contention and demands documents that are neither relevant nor*  
8 *reasonably calculated to lead to the discovery of admissible evidence in this case. The State's*  
9 *request that Petitioners select from State documents, including the over 42,000 documents that*  
10 *the State hand delivered under the Public Records Act, the documents that its attorneys believe*  
11 *"support, negate, refer or relate" to the production request's contention is an impermissible*  
12 *request for Petitioners' attorneys to engage in and produce work product. The State's request is*  
13 *also ambiguous, overbroad, and without the requisite specificity for a document request under*  
14 *CR 34 – and if taken literally, it would require a search and production that is hopelessly*  
15 *overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to*  
16 *whom this request is addressed. It also seeks information that currently is equally or more*  
17 *available to the State, as it is the State's own publicly available documents resolve this case.*  
18 *And it seeks information that is privileged or confidential (e.g., attorney-client communications).*

19           *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*  
20 *the above objections so Petitioners can respond without, for example, disclosing protected work*  
21 *product. If the State does not so agree, or if the State insists instead that Petitioners incur the*  
22 *expense of preparing and pursuing a motion for a protective order to have the Court rule on the*  
23 *above document request as propounded by the State, Petitioners ask that the State so inform*  
24 *Petitioners in writing so Petitioners can schedule the necessary discovery conference under*  
25 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*  
26 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*  
*appropriate motion for a protective order.*

1           **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

2           *As stated in Petitioners' General Objections, Petitioners will not produce documents*  
3 *until the Court resolves Petitioners' pending motion for summary judgment because, as that*  
4 *motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be*  
5 *decided as a matter of law.*

6           *Please note, moreover, that as currently written, the State's above production request*  
7 *mischaracterizes Petitioners' contentions in this case (see Petitioners' motion for summary*  
8 *judgment and the above Preliminary Statement), and demands documents that are neither*  
9 *relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case.*  
10 *The State's catch-all "refer or relate to" phrase renders this request's scope ambiguous,*  
11 *overbroad, and without the requisite specificity for a document request under CR 34 – and if*  
12 *taken literally, it would require a search and production that is hopelessly overbroad and unduly*  
13 *burdensome and harassing, both to Petitioners and the non-parties to whom this request is*  
14 *addressed. And it seeks information that is privileged or confidential (e.g., attorney-client*  
15 *communications or work product).*

16           *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*  
17 *the above objections so Petitioners can respond without, for example, disclosing protected work*  
18 *product. If the State does not so agree, or if the State insists instead that Petitioners incur the*  
19 *expense of preparing and pursuing a motion for a protective order to have the Court rule on the*  
20 *above document request as propounded by the State, Petitioners ask that the State so inform*  
21 *Petitioners in writing so Petitioners can schedule the necessary discovery conference under*

1 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
2 for this request as currently worded so that, if the State doesn't, Petitioners can file an  
appropriate motion for a protective order.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

4 As stated in Petitioners' General Objections, Petitioners will not produce documents  
5 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
6 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
7 decided as a matter of law.

8 Please note, moreover, that as currently written, the State's above production request  
9 mischaracterizes Petitioners' contention and demands documents that are neither relevant nor  
10 reasonably calculated to lead to the discovery of admissible evidence in this case. The State's  
11 request that Petitioners select from State documents, including the over 42,000 documents that  
12 the State hand delivered under the Public Records Act, the documents that its attorneys believe  
"support, negate, refer or relate" to the production request's contention is an impermissible  
13 request for Petitioners' attorneys to engage in and produce work product. The State's request is  
14 also ambiguous, overbroad, and without the requisite specificity for a document request under  
15 CR 34 - and if taken literally, it would require a search and production that is hopelessly  
16 overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to  
17 whom this request is addressed. It also seeks information that currently is equally or more  
18 available to the State, as it is the State's own publicly available documents resolve this case.  
19 And it seeks information that is privileged or confidential (e.g., attorney-client communications).

20 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
21 the above objections so Petitioners can respond without, for example, disclosing protected work  
22 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
23 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
24 above document request as propounded by the State, Petitioners ask that the State so inform  
25 Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
26 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
for this request as currently worded so that, if the State doesn't, Petitioners can file an  
appropriate motion for a protective order.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

19 As stated in Petitioners' General Objections, Petitioners will not produce documents  
20 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
21 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
22 decided as a matter of law.

23 Please note, moreover, that as currently written, the State's above production request  
24 mischaracterizes Petitioners' contention and demands documents that are neither relevant nor  
25 reasonably calculated to lead to the discovery of admissible evidence in this case. The State's  
26 request that Petitioners select from State documents, including the over 42,000 documents that  
the State hand delivered under the Public Records Act, the documents that its attorneys believe  
"support, negate, refer or relate" to the production request's contention is an impermissible  
request for Petitioners' attorneys to engage in and produce work product. The State's request is  
also ambiguous, overbroad, and without the requisite specificity for a document request under  
CR 34 - and if taken literally, it would require a search and production that is hopelessly  
overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to  
whom this request is addressed. It also seeks information that currently is equally or more

1 available to the State, as it is the State's own publicly available documents resolve this case.  
2 And it seeks information that is privileged or confidential (e.g., attorney-client communications).

3 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
4 the above objections so Petitioners can respond without, for example, disclosing protected work  
5 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
6 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
above document request as propounded by the State, Petitioners ask that the State so inform  
Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
for this request as currently worded so that, if the State doesn't, Petitioners can file an  
appropriate motion for a protective order.

#### 7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

8 As stated in Petitioners' General Objections, Petitioners will not produce documents  
9 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
decided as a matter of law.

10 Please note, moreover, that as currently written, the State's above production request  
11 demands documents that are neither relevant nor reasonably calculated to lead to the discovery  
12 of admissible evidence in this case. The State's request that Petitioners select from State  
13 documents, including the over 42,000 documents that the State hand delivered under the Public  
14 Records Act, the documents that its attorneys believe "support, negate, refer or relate" to the  
15 production request's contention is an impermissible request for Petitioners' attorneys to engage  
16 in and produce work product. The State's request is also ambiguous, overbroad, and without the  
requisite specificity for a document request under CR 34 – and if taken literally, it would require  
a search and production that is hopelessly overbroad and unduly burdensome and harassing,  
both to Petitioners and the non-parties to whom this request is addressed. It also seeks  
information that currently is equally or more available to the State, as it is the State's own  
publicly available documents resolve this case. And it seeks information that is privileged or  
confidential (e.g., attorney-client communications).

17 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
18 the above objections so Petitioners can respond without, for example, disclosing protected work  
19 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
20 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
21 above document request as propounded by the State, Petitioners ask that the State so inform  
22 Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
23 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
24 for this request as currently worded so that, if the State doesn't, Petitioners can file an  
25 appropriate motion for a protective order.

#### 26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

As stated in Petitioners' General Objections, Petitioners will not produce documents  
until the Court resolves Petitioners' pending motion for summary judgment because, as that  
motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
decided as a matter of law.

Please note, moreover, that as currently written, the State's above production request  
mischaracterizes Petitioners' contention and demands documents that are neither relevant nor  
reasonably calculated to lead to the discovery of admissible evidence in this case. The  
paragraphs referred to by this request describe the legal relief that Petitioners are seeking from

PETITIONERS RESPONSES TO RESPONDENT'S  
FIRST REQUESTS FOR PRODUCTION - 14

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1 the Court based on its interpretation of Article IX, § 1, and the State's request for documents is  
2 an impermissible request for attorney work product. Additionally, the State's request that  
3 Petitioners select from State documents, including the over 42,000 documents that the State hand  
4 delivered under the Public Records Act, the documents that its attorneys believe "support,  
5 negate, refer or relate" to the production request's contention is an impermissible request for  
6 Petitioners' attorneys to engage in and produce work product. The State's request is also  
7 ambiguous, overbroad, and without the requisite specificity for a document request under CR 34  
8 – and if taken literally, it would require a search and production that is hopelessly overbroad  
9 and unduly burdensome and harassing, both to Petitioners and the non-parties to whom this  
10 request is addressed. It also seeks information that currently is equally or more available to the  
11 State, as it is the State's own publicly available documents resolve this case. And it seeks  
12 information that is privileged or confidential (e.g., attorney-client communications).

13 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
14 the above objections so Petitioners can respond without, for example, disclosing protected work  
15 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
16 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
17 above document request as propounded by the State, Petitioners ask that the State so inform  
18 Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
19 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
20 for this request as currently worded so that, if the State doesn't, Petitioners can file an  
21 appropriate motion for a protective order.

#### 22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

23 As stated in Petitioners' General Objections, Petitioners will not produce documents  
24 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
25 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
26 decided as a matter of law.

27 Please note, moreover, that as currently written, the State's above production request  
28 mischaracterizes Petitioners' contention and demands documents that are neither relevant nor  
29 reasonably calculated to lead to the discovery of admissible evidence in this case. The  
30 paragraphs referred to by this request describe the legal relief that Petitioners are seeking from  
31 the Court based on its interpretation of Article IX, § 1, and the State's request is an  
32 impermissible request for attorney work product. Additionally, the State's request that  
33 Petitioners select from State documents, including the over 42,000 documents that the State hand  
34 delivered under the Public Records Act, the documents that its attorneys believe "support,  
35 negate, refer or relate" to the production request's contention is an impermissible request for  
36 Petitioners' attorneys to engage in and produce work product. The State's request is also  
37 ambiguous, overbroad, and without the requisite specificity for a document request under CR 34  
38 – and if taken literally, it would require a search and production that is hopelessly overbroad  
39 and unduly burdensome and harassing, both to Petitioners and the non-parties to whom this  
40 request is addressed. It also seeks information that currently is equally or more available to the  
41 State, as it is the State's own publicly available documents resolve this case. And it seeks  
42 information that is privileged or confidential (e.g., attorney-client communications).

43 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
44 the above objections so Petitioners can respond without, for example, disclosing protected work  
45 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
46 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
47 above document request as propounded by the State, Petitioners ask that the State so inform  
48 Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
49 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification

1 for this request as currently worded so that, if the State doesn't, Petitioners can file an  
2 appropriate motion for a protective order.

### 3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

4 As stated in Petitioners' General Objections, Petitioners will not produce documents  
5 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
6 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
7 decided as a matter of law.

8 Please note, moreover, that as currently written, the State's above production request  
9 demands documents that are neither relevant nor reasonably calculated to lead to the discovery  
10 of admissible evidence in this case. The paragraph referred to by this request describes the legal  
11 relief that Petitioners are seeking from the Court based on its legal interpretation of Article IX,  
12 § 1, and the State's request for documents is an impermissible request for attorney work product.  
13 Additionally, the State's request that Petitioners select from State documents, including the over  
42,000 documents that the State hand delivered under the Public Records Act, the documents  
that its attorneys believe "support, negate, refer or relate" to the production request's  
contention is an impermissible request for Petitioners' attorneys to engage in and produce work  
product. The State's request is also ambiguous, overbroad, and without the requisite specificity  
for a document request under CR 34 – and if taken literally, it would require a search and  
production that is hopelessly overbroad and unduly burdensome and harassing, both to  
Petitioners and the non-parties to whom this request is addressed. It also seeks information that  
currently is equally or more available to the State, as it is the State's own publicly available  
documents resolve this case. And it seeks information that is privileged or confidential (e.g.,  
attorney-client communications).

14 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
15 the above objections so Petitioners can respond without, for example, disclosing protected work  
16 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
17 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
18 above document request as propounded by the State, Petitioners ask that the State so inform  
19 Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
20 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
21 for this request as currently worded so that, if the State doesn't, Petitioners can file an  
22 appropriate motion for a protective order.

### 23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

24 As stated in Petitioners' General Objections, Petitioners will not produce any documents  
25 at this time because, as Petitioners' motion for summary judgment explains, the State's own  
26 documents establish its constitutional failing, and this case should be decided as a matter of law.

27 Please note, moreover, that as currently written, the State's above production request  
28 demands documents that are neither relevant nor reasonably calculated to lead to the discovery  
29 of admissible evidence in this case. The State's catch-all "constitute, refer or relate to" phrase  
30 renders this request's scope ambiguous, overbroad, and without the requisite specificity for a  
31 document request under CR 34 – and if taken literally, it would require a search and production  
32 that is hopelessly overbroad and unduly burdensome and harassing, both to Petitioners and the  
33 non-parties to whom this request is addressed. It also seeks information that currently is equally  
34 or more available to the State. And it seeks information that is privileged or confidential (e.g.,  
35 attorney-client communications).

36 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
the above objections so Petitioners can respond without, for example, disclosing protected work



1 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
2 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
3 above document request as propounded by the State, Petitioners ask that the State so inform  
4 Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
5 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
6 for this request as currently worded so that, if the State doesn't, Petitioners can file an  
7 appropriate motion for a protective order.

#### 8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

9 As stated in Petitioners' General Objections, Petitioners will not produce documents  
10 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
11 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
12 decided as a matter of law.

13 Please note, moreover, that as currently written, the State's above production request  
14 demands documents that are neither relevant nor reasonably calculated to lead to the discovery  
15 of admissible evidence in this case. The State's catch-all "constitute, refer or relate to" phrase  
16 renders this request's scope ambiguous, overbroad, and without the requisite specificity for a  
17 document request under CR 34 – and if taken literally, it would require a search and production  
18 that is hopelessly overbroad and unduly burdensome and harassing, both to Petitioners and the  
19 non-parties to whom this request is addressed. It also seeks information that is not in  
20 Petitioners' possession, custody or control, and that is equally or more available to the State.  
21 Responding to the request also calls for the making of a legal conclusion (e.g., the request's use  
22 of "basic education" when the legal meaning of that word is a central legal issue). And it seeks  
23 information that is privileged or confidential (e.g., attorney-client communications).

24 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
25 the above objections so Petitioners can respond without, for example, disclosing protected work  
26 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
above document request as propounded by the State, Petitioners ask that the State so inform  
Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
for this request as currently worded so that, if the State doesn't, Petitioners can file an  
appropriate motion for a protective order.

#### 19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

20 As stated in Petitioners' General Objections, Petitioners will not produce documents  
21 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
22 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
23 decided as a matter of law.

24 Please note, moreover, that as currently written, the State's above production request is  
25 actually an interrogatory asking Petitioners to identify the facts and conclusions that its experts  
26 are expected to testify to at trial. Petitioners will answer this interrogatory if and when it is  
properly characterized as such. Additionally, the State's request for "all documents that  
constitute, refer or relate" to anticipated expert testimony renders this request's scope  
ambiguous, overbroad, and without the requisite specificity for a document request under CR 34  
– and if taken literally, it would require a search and production that is hopelessly overbroad  
and unduly burdensome and harassing, both to Petitioners and the non-parties to whom this  
request is addressed. It also seeks information that currently is equally or more available to the

1 State. And it seeks information that is privileged or confidential (e.g., attorney-client  
communications).

2 Subject to these objections, Petitioners respond that they have at this time not retained  
3 any testifying experts to testify at trial because, as their pending summary judgment motion  
4 explains, a trial is not necessary. Should testifying trial experts become necessary, Petitioners  
will retain and disclose their trial testimony experts by the date stated in the Court's scheduling  
order.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

6 See response to request number 22.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

8 As stated in Petitioners' General Objections, Petitioners will not produce documents  
9 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
decided as a matter of law.

10 Please note, moreover, that as currently written, the State's above production request  
11 demands documents that are neither relevant nor reasonably calculated to lead to the discovery  
of admissible evidence in this case. The State's catch-all "relate to" phrase renders this  
12 request's scope ambiguous, overbroad, and without the requisite specificity for a document  
request under CR 34 – and if taken literally, it would require a search and production that is  
13 hopelessly overbroad and unduly burdensome and harassing, both to Petitioners and the non-  
parties to whom this request is addressed. And it seeks information that is privileged or  
confidential (e.g., attorney-client communications and work product).

14 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
15 the above objections so Petitioners can respond without, for example, disclosing protected work  
product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
16 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
above document request as propounded by the State, Petitioners ask that the State so inform  
17 Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
18 for this request as currently worded so that, if the State doesn't, Petitioners can file an  
appropriate motion for a protective order.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

20 As stated in Petitioners' General Objections, Petitioners will not produce documents  
21 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
decided as a matter of law.

22 Please note, moreover, that as currently written, the State's above production request  
23 mischaracterizes Petitioners' contentions in this case (see Petitioners' motion for summary  
judgment and the above Preliminary Statement), and demands documents that are neither  
24 relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case.  
Petitioners further object because this document request is actually an interrogatory, and it  
25 should be asked as such. And it seeks information that is privileged or confidential (e.g.,  
attorney-client communications or work product).

26 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
the above objections so Petitioners can respond without, for example, disclosing protected work



1 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
2 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
3 above document request as propounded by the State, Petitioners ask that the State so inform  
4 Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
for this request as currently worded so that, if the State doesn't, Petitioners can file an  
appropriate motion for a protective order.

#### 5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

6 As stated in Petitioners' General Objections, Petitioners will not produce documents  
7 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
8 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
9 decided as a matter of law.

10 Please note, moreover, that as currently written, the State's above production request  
11 mischaracterizes Petitioners' contentions in this case (see Petitioners' motion for summary  
judgment and the above Preliminary Statement), and demands documents that are neither  
relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case.  
Petitioners further object because this document request is actually an interrogatory, and it  
should be asked as such. And it seeks information that is privileged or confidential (e.g.,  
attorney-client communications or work product).

12 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
13 the above objections so Petitioners can respond without, for example, disclosing protected work  
14 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
15 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
16 above document request as propounded by the State, Petitioners ask that the State so inform  
Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
for this request as currently worded so that, if the State doesn't, Petitioners can file an  
appropriate motion for a protective order.

#### 17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

18 As stated in Petitioners' General Objections, Petitioners will not produce documents  
19 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
20 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
21 decided as a matter of law.

22 Please note, moreover, that as currently written, the State's above production request  
23 mischaracterizes Petitioners' contentions in this case (see Petitioners' motion for summary  
judgment and the above Preliminary Statement), and demands documents that are neither  
relevant nor reasonably calculated to lead to the discovery of admissible evidence in this case.  
Petitioners further object because this document request is actually an interrogatory, and it  
should be asked as such. And it seeks information that is privileged or confidential (e.g.,  
attorney-client communications or work product).

24 Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
25 the above objections so Petitioners can respond without, for example, disclosing protected work  
26 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
above document request as propounded by the State, Petitioners ask that the State so inform  
Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification

PETITIONERS RESPONSES TO RESPONDENT'S  
FIRST REQUESTS FOR PRODUCTION - 19

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SEATTLE, WASHINGTON 98101-3299  
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1 for this request as currently worded so that, if the State doesn't, Petitioners can file an  
2 appropriate motion for a protective order.

### 3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

4 *As stated in Petitioners' General Objections, Petitioners will not produce documents*  
5 *until the Court resolves Petitioners' pending motion for summary judgment because, as that*  
6 *motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be*  
7 *decided as a matter of law.*

8 *Please note, moreover, that as currently written, the State's above production request*  
9 *demand documents that are neither relevant nor reasonably calculated to lead to the discovery*  
10 *of admissible evidence in this case. The State's catch-all request for "all media or other*  
11 *statements" renders this request's scope ambiguous, overbroad, and without the requisite*  
12 *specificity for a document request under CR 34 – and if taken literally, it would require a search*  
13 *and production that is hopelessly overbroad and unduly burdensome and harassing, both to*  
14 *Petitioners and the non-parties to whom this request is addressed. (For example, a similar*  
15 *request from Petitioners might require the State to locate and produce any statement that any*  
16 *legislator has made over the last five years regarding education, the appropriations process, or*  
17 *the State's education failings.) The request also seeks information that is privileged or*  
18 *confidential (e.g., attorney-client communications).*

19 *Petitioners accordingly ask that the State agree to narrow this discovery request to cure*  
20 *the above objections so Petitioners can respond without, for example, disclosing protected work*  
21 *product. If the State does not so agree, or if the State insists instead that Petitioners incur the*  
22 *expense of preparing and pursuing a motion for a protective order to have the Court rule on the*  
23 *above document request as propounded by the State, Petitioners ask that the State so inform*  
24 *Petitioners in writing so Petitioners can schedule the necessary discovery conference under*  
25 *CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification*  
26 *for this request as currently worded so that, if the State doesn't, Petitioners can file an*  
*appropriate motion for a protective order.*

### 16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

17 *As stated in Petitioners' General Objections, Petitioners will not produce documents*  
18 *until the Court resolves Petitioners' pending motion for summary judgment because, as that*  
19 *motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be*  
20 *decided as a matter of law.*

21 *Please note, moreover, that as currently written, the State's above production request*  
22 *mischaracterizes Petitioners' contentions and demands documents that are neither relevant nor*  
23 *reasonably calculated to lead to the discovery of admissible evidence in this case. The State's*  
24 *request that Petitioners select from State documents, including the over 42,000 documents that*  
25 *the State hand delivered under the Public Records Act, the documents that its attorneys believe*  
26 *"support, negate, refer or relate" to the production request's contention is an impermissible*  
*request for Petitioners' attorneys to engage in and produce work product. The State's request is*  
*also ambiguous, overbroad, and without the requisite specificity for a document request under*  
*CR 34 – and if taken literally, it would require a search and production that is hopelessly*  
*overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to*  
*whom this request is addressed. It also seeks information that currently is equally or more*  
*available to the State, as it is the State's own publicly available documents resolve this case.*  
*Responding to the request also calls for the making of a legal conclusion (e.g., the request's use*  
*of "basic program of education" when the legal meaning of that phrase is a central legal issue).*  
*And it seeks information that is privileged or confidential (e.g., attorney-client communications).*

1       Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
2 the above objections so Petitioners can respond without, for example, disclosing protected work  
3 product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
4 expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
5 above document request as propounded by the State, Petitioners ask that the State so inform  
6 Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
7 CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
8 for this request as currently worded so that, if the State doesn't, Petitioners can file an  
9 appropriate motion for a protective order.

#### 10       **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

11       As stated in Petitioners' General Objections, Petitioners will not produce documents  
12 until the Court resolves Petitioners' pending motion for summary judgment because, as that  
13 motion explains, Petitioners' entitlement to the narrow relief they seek in this case should be  
14 decided as a matter of law.

15       Please note, moreover, that as currently written, the State's above production request  
16 mischaracterizes Petitioners' contentions and demands documents that are neither relevant nor  
17 reasonably calculated to lead to the discovery of admissible evidence in this case. The State's  
18 request that Petitioners select from State documents, including the over 42,000 documents that  
19 the State hand delivered under the Public Records Act, the documents that its attorneys believe  
20 "support, negate, refer or relate" to the production request's contention is an impermissible  
21 request for Petitioners' attorneys to engage in and produce work product. The State's request is  
22 also ambiguous, overbroad, and without the requisite specificity for a document request under  
23 CR 34 – and if taken literally, it would require a search and production that is hopelessly  
24 overbroad and unduly burdensome and harassing, both to Petitioners and the non-parties to  
25 whom this request is addressed. It also seeks information that currently is equally or more  
26 available to the State, as it is the State's own publicly available documents resolve this case.  
Responding to the request also calls for the making of a legal conclusion (e.g., the request's use  
of "basic program of education" when the legal meaning of that phrase is a central legal issue).  
And it seeks information that is privileged or confidential (e.g., attorney-client communications).

      Petitioners accordingly ask that the State agree to narrow this discovery request to cure  
the above objections so Petitioners can respond without, for example, disclosing protected work  
product. If the State does not so agree, or if the State insists instead that Petitioners incur the  
expense of preparing and pursuing a motion for a protective order to have the Court rule on the  
above document request as propounded by the State, Petitioners ask that the State so inform  
Petitioners in writing so Petitioners can schedule the necessary discovery conference under  
CR 26(i) and King County LR 37(e) to discuss whether the State has sufficient legal justification  
for this request as currently worded so that, if the State doesn't, Petitioners can file an  
appropriate motion for a protective order.

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1 OBJECTIONS ASSERTED this 21<sup>st</sup> day of May, 2007.

2 FOSTER PEPPER PLLC

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4 Thomas F. Ahearne, WSBA No. 14844  
5 Edmund W. Robb, WSBA No. 35948  
6 Attorneys for Petitioner  
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PETITIONERS RESPONSES TO RESPONDENT'S  
FIRST REQUESTS FOR PRODUCTION - 22

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6 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

7 MATHEW & STEPHANIE MCCLEARY, on their own  
8 behalf and on behalf of KELSEY & CARTER  
9 MCCLEARY, their two children in Washington's  
10 public schools; et al.,

11 Petitioners,

12 v.

13 STATE OF WASHINGTON,

14 Respondent.

*The Honorable Paris Kallas*

No. 07-2-02323-2 SEA

DECLARATION OF SERVICE

15 I, Kellie DeVera, hereby state that on this 21st day of May, 2007, I caused the following:


- 16 1. Petitioner's Initial Responses to Respondent's First Requests for Production; and  
17 2. this Declaration of Service

18 to be served via hand-delivery upon:

19 William G. Clark  
20 Office of the Attorney General  
21 800 5<sup>th</sup> Ave., Suite 2000  
22 Seattle, WA 98104-3188  
23 Attorneys for Respondent

24 I declare under penalty of perjury under the laws of the State of Washington, that the  
25 foregoing is true and correct.

26 Executed in Seattle, Washington this 21st day of May, 2007.

27  
28   
29 Kellie DeVera

DECLARATION OF SERVICE - 1

COPY

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1111 THIRD AVENUE, SUITE 3400  
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♦ 206-447-4400